



STATE OF NEW JERSEY

Board of Public Utilities

Two Gateway Center

Newark, NJ 07102

www.bpu.state.nj.us

TELECOMMUNICATIONS

IN THE MATTER OF THE PETITION OF)
NOW COMMUNICATIONS, INC. D/B/A NOW)
COMMUNICATIONS, INC. OF MISSISSIPPI, INC. FOR)
AUTHORITY TO PROVIDE LOCAL EXCHANGE)
TELECOMMUNICATIONS SERVICES THROUGHOUT)
NEW JERSEY)

ORDER

DOCKET NO. TE02060349

(SERVICE LIST ATTACHED)

BY THE BOARD:

Pursuant to N.J.S.A. 48:2-1 et seq. and Section 253 of the federal Telecommunications Act of 1996, 47 U.S.C. § 151 et seq., and by letter dated June 14, 2002, NOW Communications, Inc. d/b/a Now Communications Inc. of Mississippi, Inc. ("Petitioner" or "Company") filed a Petition with the Board of Public Utilities ("Board") requesting authority to provide local exchange telecommunications services throughout the State of New Jersey. Petitioner requests confidential treatment of the financial information in Exhibit 3 of its Petition. Pursuant to the Open Public Records Act N.J.S.A. 47: 1A-1 et seq., the Petitioner has submitted its financial information under seal and has included a sworn affidavit with substantiation for confidential treatment in order to limit the availability of proprietary information.

Now Communications, Inc. was incorporated under the laws of the State of Mississippi on February 29, 1996. Petitioner's principal offices are located at 2000 Newpoint Place, N.W., Suite 900, Lawrenceville, Georgia 30043-5578.

Petitioner submitted copies of its Articles of Incorporation, Mississippi Certificate of Good Standing and its New Jersey Certificate of Authority to Operate as a Foreign Corporation. According to the Petition, Now Communications, Inc. is currently certified to provide telecommunications services in Alabama, Arizona, Arkansas, California, Colorado, Delaware, District of Columbia (local only), Florida, Georgia, Idaho (local only) Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan (local only) Minnesota (IXC only), Mississippi, Missouri, Montana, Nebraska, (local only), Nevada, New Hampshire, New Mexico (local only), New Jersey, New York, North Carolina, Oklahoma, Oregon, Pennsylvania,

Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Wisconsin and Wyoming. Petitioner states that it has pending certification in Connecticut, North Dakota, Ohio and South Dakota. The Company states that it is in the process of expanding its authority in several of the above mentioned states. Petitioner further states that it has not been denied authority to provide telecommunications services in any state nor had its authority revoked in any jurisdiction.

According to the Petition, the Company seeks to provide local exchange telecommunications services to large residential consumers on a prepaid basis within New Jersey. Petitioner states that the local exchange telecommunications services offering will be limited to unbundled networks elements of the Incumbent Local Exchange Carrier. The Company asserts that services will be limited to the provision of prepaid local exchange services to residential customers. The Petitioner intends to utilize the facilities of Verizon located within New Jersey and it contends that it has no present plans to build, locate or acquire facilities at this time. The toll-free number for local customers, 1-888-565-1011, will be printed on customer invoices.

Petitioner requests a waiver of N.J.S.A. 48:3-7.8, N. J. A. C. 14:1-4.3 and 14:10 -1.16, which require that books and records be kept within the State of New Jersey and be maintained in accordance with the Uniform System of Accounts ("USOA"), respectively. In the interest of efficiency and to prevent undue burden, Petitioner requests permission to maintain its books and records in accordance with Generally Accepted Accounting Principles and to keep all books, records, documents and other writings incident to the conduct of Petitioner's business in the State of New Jersey at Petitioner's corporate offices in Lawrenceville, Georgia. Petitioner also states, upon written notice from the Board, it will provide its books and records at such time and place within New Jersey as the Board may designate and will pay any reasonable expenses for examination of the records.

Petitioner asserts that expedited approval of its Petition will further the public interest by expanding the availability of competitive telecommunications services in New Jersey, especially in the area of prepaid services where customers are generally classified as high credit risk and as a result find it difficult to obtain service from non-prepaid providers.

With regard to its technical and managerial qualifications, the Petitioner asserts that the experience of its principals, described in Exhibit 4, demonstrates that the Petitioner has the technical and managerial resources for the provision of telecommunications services on an interstate and intrastate basis. Petitioner states it has all of the qualified personnel to provide competitive local exchange service, including accounting, engineering, sales and all other personnel required to provide such services.

DISCUSSION

On February 8, 1996, the federal Telecommunications Act of 1996, P.L. 104-104, 110 Stat. 56, codified in scattered sections of 47 U.S.C. §151 et. seq., was signed into law, removing barriers to competition by providing that:

[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

[47 U.S.C. §253(a)].

Therefore, Board approval of Petitioner's entry into the telecommunications marketplace is required, assuming Petitioner meets all other requirements, including, but not limited to, a demonstration of financial, technical and managerial integrity.

In considering this Petition, the Board recognizes its obligation not to prohibit entry into intrastate telecommunications markets. 47 U.S.C. §253(a). Approval is also in keeping with the New Jersey State Legislature's declaration that it is the policy of the State to provide diversity in the supply of telecommunications services, and its findings that competition will "promote efficiency, reduce regulatory delay and foster productivity and innovation" and "produce a wider selection of services at competitive market-based prices." N.J.S.A. 48:2-21.16(a)(4); N.J.S.A. 48:2-21.16(b)(1) and (3).

Therefore, having reviewed Now Communications, Inc.'s Petition and the information supplied in support thereof, the Board FINDS that the Petitioner is in compliance with the Board's filing requirements which are necessary to provide telecommunications services in New Jersey. Accordingly, the Board HEREBY AUTHORIZES the Petitioner to provide local exchange telecommunications services throughout New Jersey subject to approval of its tariff and submission of pro forma financials for its New Jersey operations. The Board also FINDS that in accordance with N.J.S.A. 48:2-59 and 48:2-60, and N.J.S.A. 52:27E-61 and 52:27E-62, the Petitioner is subject to an annual assessment by both the Board and the Division of Ratepayer Advocate, respectively. The Board notes that the Petitioner will not be able to provide telecommunications services until a tariff is approved by the Board and the required financial statements have been provided.

The Board HEREBY ORDERS that:

- 1) Petitioner file its tariff for Board approval.
- 2) Pursuant to N. J. S. A. 48:2-16.3, Petitioner shall file an annual report as of December 31 of each year, which is due on or before March 31 of the following year.
- 3) Pursuant to N. J. S. A. 48:2-59 and 48:2-60, Petitioner shall file a statement of gross intrastate revenues from operations form (AR3-1) as of December 31 of each year, which is due on or before June 1 the following year.

On or before February 1st of each year, the Petitioner will receive, from the Division of Audits, an annual report package and a statement of gross intrastate revenues from operations form for the preceding calendar year. The purpose of these documents is to report the company's financial information and gross intrastate revenues from operations as of December 31 of each year. The annual report and statement of gross intrastate revenues from operations form is due on or before March 31 and June 1 of the following year, respectively. If Petitioner does not receive these documents, it is Petitioner's responsibility to obtain them from the Board. It is also the Petitioner's responsibility to ensure timely filing of these reports.

Regarding the Petitioner's request for waivers of the Board rules, the Board FINDS that the Petitioner has demonstrated good cause why the Board should grant relief from its requirements that the Petitioner maintain its books and records under the USOA and within New Jersey. Therefore, subject to the Petitioner's continuing responsibility to provide the Board its books and records upon 48 hours notice, and in the manner requested, and to pay to the Board any reasonable expenses or charges incurred by the Board for any investigation or examination of

these books and records, the Board APPROVES the Petitioner's request for the exemptions from maintaining its books and records in New Jersey and under the USOA. As for Petitioner's request for confidential treatment of the financial information in Exhibit C, the Board shall handle such requests for confidential treatment in accordance with the Board's proposed regulations at N.J.A.C. 14:1-12, et seq.

DATED: 7/25/03

BOARD OF PUBLIC UTILITIES
BY:

(SIGNED)

JEANNE M. FOX
PRESIDENT

(SIGNED)

FREDERICK F. BUTLER
COMMISSIONER

(SIGNED)

CAROL J. MURPHY
COMMISSIONER

(SIGNED)

CONNIE O. HUGHES
COMMISSIONER

(SIGNED)

JACK ALTER
COMMISSIONER

ATTEST:

(SIGNED)
KRISTI IZZO
SECRETARY

IN THE MATTER OF THE PETITION FOR AN ORDER AUTHORIZING
NOW COMMUNICATIONS, INC. D/B/A NOW COMMUNICATIONS, INC. OF
MISSISSIPPI, INC. TO PROVIDE
LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES
THROUGHOUT THE STATE OF NEW JERSEY
DOCKET NO. TE02060349

SERVICE LIST

Serial No.	<u>Name and Address</u>	Serial No.	<u>Name and Address</u>
1	Petitioner's Contact Person: R. Scott Seab, Esquire Vice President Regulatory Affairs NOW Communications, Inc. - Regulatory Office 711 S. Tejon Street, Suite 201 Colorado Springs, Co. 80903	4	Board's Staff: Walter Szymanski, Director Division of Audits Board of Public Utilities Two Gateway Center Newark, New Jersey 07102
2	Petitioner's Attorney: Andrew B. Lustigman, Esq. The Lustigman Firm, P.C. 158 Windham Road, Hillsdale, New Jersey 07642	5	Board's Staff: Anthony Centrella, Director Division of Telecommunications Board of Public Utilities Two Gateway Center Newark, New Jersey 07102
3	Ratepayer Advocate: Seema M. Singh, Esquire Acting Director and Ratepayer Advocate Division of Ratepayer Advocate 31 Clinton Street, 11 th Floor P.O. Box 46005 Newark, New Jersey 07101	6	Deputy Attorney General: Grace Kurdian Department of Law & Public Safety Division of Law 124 Halsey Street, 5 th floor P.O. Box 45029 Newark, New Jersey 07102